

UNITED STATES INTERNATIONAL TRADE COMMISSION

STAINLESS STEEL BAR FROM BRAZIL, INDIA, JAPAN, AND SPAIN

Investigations Nos. 731-TA-678-679 and 681-682 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on December 30, 1999 (64 F.R. 73579) and determined on April 6, 2000, that it would conduct full reviews (65 F.R. 20834, April 18, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on July 6, 2000 (65 F.R. 41728). The hearing was held in Washington, DC, on January 30, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In February 1995, the Commission found that an industry in the United States was materially injured by reason of imports of stainless steel bar from Brazil, India, Japan, and Spain.¹ Commerce published antidumping duty orders regarding Brazil, India, and Japan on February 21, 1995, and an antidumping duty order regarding Spain on March 2, 1995.²

On December 30, 1999, the Commission instituted reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty orders on imports of stainless steel bar from Brazil, India, Japan, and Spain would likely lead to continuation or recurrence of material injury to the domestic industry.³

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁴ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received responses to the notice of institution from: (1) six domestic producers of stainless steel bar, and a domestic union/worker group, and (2) one Spanish producer and exporter of subject merchandise and a U.S. importer of subject merchandise from Spain. No response to the notice of institution was filed by any producer, importer, or exporter with respect to subject merchandise from Brazil, India, or Japan.

On April 6, 2000, the Commission determined that the domestic interested party group response to its notice of institution was adequate with respect to all reviews and that the respondent interested party group response for Spain was adequate.⁵ The Commission therefore determined to conduct a full review

¹ Stainless Steel Bar From Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995).

² 60 Fed. Reg. 9661 (Feb. 21, 1995), 60 Fed. Reg. 11656 (Mar. 2, 1995).

³ 64 Fed. Reg. 73579 (Dec. 30, 1999).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ See Explanation of Commission Determinations on Adequacy, Confidential Report (“CR”), as revised by memoranda INV-Y-035 and INV-Y-037, and Public Report (“PR”) at Appendix A.

concerning subject imports from Spain.⁶ The Commission further determined to conduct full reviews concerning Brazil, India, and Japan to promote administrative efficiency in light of its decision to conduct a full five-year review concerning Spain.⁷

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁸ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁹ In a section 751(c) review, the Commission must also take into account “its prior injury determinations.”¹⁰

Commerce described the merchandise subject to the antidumping duty orders under review as:

[A]rticles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. Stainless steel bar includes cold-finished stainless steel bar that is turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.¹¹

Stainless steel bar and articles produced from stainless steel bar are used in applications in which the products’ corrosion resistance, heat resistance, surface condition, appearance, and finish are important. There are significant applications in the automotive, chemical, dairy, food, and pharmaceutical industries, as well as in marine applications and in pumps and connectors for fluid handling systems. Stainless steel

⁶ Id.

⁷ Id.

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ 19 U.S.C. § 1675a(a)(1)(a).

¹¹ 65 Fed. Reg. 25909 (May 4, 2000).

concrete reinforcing bar is used in construction projects in which its non-corrosive and nonmagnetic properties are desired.¹²

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.¹³ In the original investigations of stainless steel bar, the Commission found the like product to be all stainless steel bar, rejecting the argument that cold-finished and hot-finished stainless steel bar are separate like products.¹⁴

In these reviews, parties have raised no new like product issues and there is no new information that indicates a need to revisit the Commission's definition of the like product in the original determinations. Accordingly, we define the domestic like product in these five-year reviews to be all stainless steel bar, coextensive with Commerce's scope.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹⁵ In accordance with our domestic like product determination in the instant five-year reviews, we determine that the domestic industry consists of the domestic producers of stainless steel bar.

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B), which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.¹⁶ Although no party has argued

¹² CR at I-15, PR at I-13 - I-14.

¹³ In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹⁴ USITC Pub. 2856 (Feb. 1995) at I-6 - I-9 (applying the five-factor, semifinished products analysis).

¹⁵ 19 U.S.C. § 1677(4)(A).

¹⁶ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
 - (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
 - (3) the position of the related producer vis-à-vis the rest of the industry, i.e., whether inclusion
- (continued...)

for the exclusion of any domestic producer under this provision, the record raises the following related party issues.

Carpenter ***.¹⁷ It is unlikely that *** could have a significant effect on either Carpenter's financial performance in stainless steel bar operations or the financial performance of the industry as a whole.¹⁸ Further, there is no likelihood of any such benefit being provided in the reasonably foreseeable future, due to ***. Given these facts, and recognizing that Carpenter is predominantly a producer rather than ***, we do not find that appropriate circumstances exist to exclude Carpenter from the domestic industry.

The record also indicates that Hi Specialty is related to Hitachi Metals, a manufacturer of stainless steel bar in Japan. ***.¹⁹ Accordingly, Hi Specialty is a related party *** because it is related to Hitachi Metals, a Japanese producer/exporter, ***. There is no basis for concluding, however, that appropriate circumstances exist for excluding Hi Specialty from the domestic industry. Even if Hi Specialty ***,²⁰ In addition, even though it is a *** producer, accounting for *** percent of U.S. production in 1999,²¹ Hi Specialty's primary interest is in domestic production. No party has requested that Hi Specialty be excluded from the domestic industry. Based upon all the foregoing, we find that appropriate circumstances do not exist to exclude Hi Specialty from the domestic industry.

Accordingly, we have included all domestic producers of stainless steel bar, including Carpenter and Hi Specialty, in the domestic industry.

¹⁶ (...continued)

or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid From the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

¹⁷ ***. CR at I-28 & n.50, PR at I-22 & n.50. Carpenter also participates in a joint venture with Kalyani Carpenter, a manufacturer of stainless steel bar in Pune, India. CR at I-27 - I-28, PR at I-22. Even if this joint venture constitutes direct or indirect control between Carpenter and a producer and potential exporter of subject merchandise, we do not find appropriate circumstances for excluding Carpenter, ***, from the domestic industry, essentially for the reasons discussed later in the text.

¹⁸ As noted earlier, Carpenter is the *** of the domestic like product, with *** percent of U.S. production in 1999. CR and PR at Table I-2. At their peak, *** of *** short tons represent *** estimated U.S. shipments of *** short tons in 1999. Including the production of Talley, which Carpenter acquired in 1998, Carpenter accounted for *** percent of U.S. production in 1999. CR and PR at Table I-2, & n.15. Adding Talley's 1999 shipments to those of Carpenter, for a total of *** short tons (CR and PR at Table I-2), would further reduce the significance of ***.

¹⁹ ***.

²⁰ See CR and PR at Table I-2 and ***. It is not clear if, or to what extent, Hi Specialty's *** is attributable to its producing ***. See CR and PR at Tables III-4 and III-6.

²¹ CR and PR at Table I-2.

III. CUMULATION²²

A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²³

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.²⁴ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.²⁵ With respect to this provision, the Commission

²² Commissioner Bragg does not join this section. While she concurs with the majority’s findings of a reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked, her determinations are based upon a different analytical framework than that of her colleagues. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000). In particular, Commissioner Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. Having found a reasonable overlap of competition in these reviews for the same reasons as those set forth by the Commission majority, Commissioner Bragg turns to the issue of no discernible adverse impact. Based upon the excess capacity in each of the subject countries, export orientation of subject producers in Brazil, India, and Spain, evidence of recent underselling by Spanish subject merchandise (even if one were to factor in a *** percent mark-up on sales of Spanish subject merchandise from mill depots to service centers), evidence of underselling by subject imports from Brazil, India, and Japan during the original investigations, and given the currently weakened condition of the domestic industry, Commissioner Bragg finds that revocation of each of the orders at issue will lead to a likely discernible adverse impact to the domestic industry. Accordingly, Commissioner Bragg cumulates all subject imports. CR and PR at Tables IV-6 - IV-9; CR and PR at Tables V-8 - V-13; CR at V-13, n.9, PR at V-10, n.9; USITC Pub. 2856 at I-16 - I-17.

²³ 19 U.S.C. § 1675a(a)(7).

²⁴ 19 U.S.C. § 1675a(a)(7).

²⁵ SAA, H.R. Rep. No. 103-316, vol. I (1994).

generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.²⁶

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.²⁷ Only a “reasonable overlap” of competition is required.²⁸ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.²⁹

In these reviews, the statutory requirement that all of the stainless steel bar reviews be initiated on the same day is satisfied.

B. No Discernible Adverse Impact

No party has argued that imports from Brazil, India, or Japan would not be likely to have a discernible adverse impact on the domestic industry if those orders are revoked. The Spanish respondents, however, have argued that subject imports from Spain will have no discernible adverse impact on the domestic industry if the antidumping duty order with respect to Spain is revoked.³⁰ Because of the conditions of competition, the likely volume of imports from Spain, and the current condition of the

²⁶ For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review), USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review), USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

²⁷ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

²⁸ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994, aff’d, 96 F. 3d 1352 (Fed. Cir. 1996)).

²⁹ See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

³⁰ E.g., Spanish Producers’ Prehearing Brief at 16-20 (characterizing historic and current volumes as “low,” and arguing that production capacity is *** and there are *** inventories of Spanish bar).

domestic industry, we find that subject imports from Spain would likely have a discernible adverse impact on the domestic industry if the antidumping duty order is revoked.

Subject imports from Spain have remained in the U.S. market in the years since the orders were imposed, albeit at substantially reduced levels.³¹ The continuing presence of these subject imports in the domestic market indicates that subject foreign producers continue to have contacts and channels of distribution necessary to make sales in the U.S. market.

As discussed further in the volume section of these views, production capacity in Spain remains large and, indeed, has grown since the original investigations. Moreover, the Spanish industry maintains excess capacity and is oriented to supply export markets.

We therefore find that subject imports from Spain, which are moderately to highly substitutable with domestic stainless steel bar, would likely enter the U.S. market in sufficient quantities and at sufficiently low prices that they would have a discernible adverse impact on the domestic industry absent the order.

C. Reasonable Overlap of Competition

In the original determination the Commission found that subject imports from Brazil, India, Japan and Spain competed with each other and with the domestic like product and therefore cumulated the volume and price effects of those imports.³² In these reviews, we find that there will likely be a reasonable overlap of competition among the subject imports from Brazil, India, Japan, and Spain, and between those subject imports and the domestic like product if the orders are revoked. There is a moderate to high degree of substitutability among the domestic like product and imports from these subject countries. Most U.S. producers and importers agree that the subject imports and the domestic like product were always or frequently interchangeable.³³ In this regard, virtually all firms purchasing stainless steel bar require some form of certification, such as qualification under standards of the American Society for Testing and

³¹ CR and PR at Table I-1.

³² USITC Pub. 2856 at I-15.

³³ Quality was identified most frequently among the three most important factors considered by purchasers. CR and PR at Table II-2. All nine purchasers that responded to the question reported that imported and domestic stainless steel bar are used in the same applications (although their knowledge pertained mostly to nonsubject imports). CR at II-14, PR at II-9. Eight of eleven purchasers responded in the negative when asked if certain grades/types/sizes of stainless steel bar were available from only a single source; those responding affirmatively identified Carpenter as producing certain proprietary and little-used grades that other producers do not make because of economics. CR at II-14, PR at II-9. Importers similarly reported that U.S.-produced and imported stainless steel bar from all subject countries could be used interchangeably in most cases. CR at II-14, PR at II-10. Eight importers stated that differences in product characteristics and sales conditions between U.S.- produced and subject imported stainless steel bar did not affect their firms' sales of stainless steel bar, and four importers reported different characteristics did affect their sales. Every responding U.S. producer considered all subject stainless steel bar to be used interchangeably with domestic product, and most U.S. producers stated that there were no differences in product characteristics or sales conditions between the domestic like product and the subject imports that were significant factors in their sales of stainless steel bar. CR at II-14 - II-15, PR at II-10. That there may be certain limited end uses which only the Japanese product or a Carpenter product can satisfy, some perception of the Indian product as of lower quality, or instances in which the U.S. or subject imported product failed a purchaser's qualification standards do not mean that subject imports from the four countries and the U.S. product do not generally compete with each other.

Materials (ASTM) and American Society of Mechanical Engineers (ASME), and in only a few instances were U.S. or subject-country firms cited as failing to meet purchasers' quality standards.³⁴

We note that a significant portion of both domestic producers' shipments and shipments of the subject imports from Brazil, India and Spain in 1999 were of grades 303, 304/304L, and 316/316L.³⁵ Although the limited volume of reported imports from Japan in 1999 was solely in other grades, the domestic producers' shipments and, to some extent, those of the other subject countries also included shipments of other grades.³⁶ Moreover, any current differences in grades do not prevent us from concluding that there is likely to be a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product if the orders are revoked. In a five-year review, the proper focus is on likely post-revocation behavior, and the composition of current imports, affected by the discipline of an antidumping or countervailing duty order, is not necessarily indicative of likely post-revocation competition. While current imports from Japan may be specialized or limited to particular grades, these imports are subject to the antidumping duty order and are in small quantities. We note that at least 89 percent of the subject imports from Japan in the final year of the original investigation period were of grades 303, 304, 316 and 416, the same grades that account currently for significant proportions of both the domestic product and imports from other subject countries.³⁷

We also find that the domestic like product and the subject imports from Brazil, India, Japan, and Spain are or are likely to be sold through similar channels of distribution, often through service centers to end users, as they were during the original investigations. Although current distribution practices are not dispositive of what will occur if the orders are revoked, the record indicates that domestic, Indian, and Spanish stainless steel bar are sold in varying percentages to all four principal channels: service centers/distributors, mill depots, cold finishers, and end users.³⁸ The Brazilian product is sold only to service centers/distributors and mill depots and the Japanese product is sold only to service centers/distributors and end users.³⁹ We find that a significant overlap in channels of distribution, via service centers, is likely upon revocation.⁴⁰

Our analysis of current and prospective overlap of geographic markets and simultaneous presence is limited by low current volumes of imports that are subject to the outstanding orders. Most U.S.

³⁴ CR at II-13, PR at II-9. One purchaser identified ***, as having failed to meet its quality requirements, and another identified ***, as failing to qualify because of quality and delivery problems.

³⁵ CR and PR at Tables E-1 and E-2.

³⁶ Id.

³⁷ USITC Pub. 2856 at I-14; CR and PR at Tables E-1 and E-2.

³⁸ CR and PR at Table IV-3. Only small quantities of the domestic like product are sold at the mill depot level and only a small quantity of subject imports enter the chain of distribution at the end user level. Id.

³⁹ CR and PR at Table IV-3.

⁴⁰ CR and PR at Table IV-3. The Spanish producers correctly note that a higher percentage of their imports, compared with imports from other subject countries and the domestic like product, enter the distribution chain at the mill depot level. However, mill depots sell most often to service centers and, as the Spanish producers therefore acknowledge, the mill depot is simply "one-step-removed upstream in the distribution chain" from stainless steel bar sold directly to service centers. CR at IV-11 - IV-13, PR at IV-8. Any differences in the point at which stainless steel bar enters the distribution chain are not sufficient to conclude that channel differences result in there being no likely reasonable overlap in competition among the Spanish subject imports, the other subject imports, and the domestic like product. Moreover, there is nothing to prevent sales of the Spanish product directly to service centers, as was common during the original investigations, upon revocation.

producers reported that they served the national market, although some concentrated in regional markets.⁴¹ Importers tended to have a greater regional focus than producers, although some importers reported selling nationwide.⁴² Subject imports from each country have been present during the period considered in these reviews, albeit on a limited basis.⁴³ In the original investigations, the Commission found that U.S. producers and importers of the subject merchandise sold on a nationwide basis, that importers were not geographically concentrated, and that subject imports of stainless steel bar from Brazil, India, Japan, and Spain were simultaneously present in the U.S. market during the entire period of investigation.⁴⁴

We therefore find that there likely would be a reasonable overlap of competition between the subject imports and the domestic like product, and among the subject imports themselves, if the orders are revoked.

We have taken into account other significant conditions of competition that are likely to prevail if the orders are revoked in evaluating whether to cumulate imports. We find that subject imports from Brazil, India, Japan, and Spain would compete in the U.S. market under similar conditions of competition, discussed below. Therefore, based on the foregoing, we exercise our discretion to cumulate subject imports from Brazil, India, Japan, and Spain.⁴⁵

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORSEEABLE TIME IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or a countervailable subsidy would be likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁶ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴⁷ Thus, the likelihood standard is

⁴¹ CR at V-5, PR at V-6.

⁴² CR at V-7, PR at V-6.

⁴³ CR and PR at Table I-1.

⁴⁴ USITC Pub. 2856 at I-14.

⁴⁵ Roldan, a Spanish producer, states confidentially that it ***. E.g., Attachment 5 of Spanish Producers’ Posthearing Brief at 1-2. Roldan argues that the *** distinguishes the conditions under which the Spanish product will compete in the U.S. market from the conditions under which the other subject imports will compete and, on that basis, asks that the Commission decline to exercise its discretion to cumulate subject imports from Spain with the other subject imports. Id. We do not view *** as constituting a condition of competition that would lead us not to exercise our discretion to cumulate all subject country imports.

⁴⁶ 19 U.S.C. § 1675(d)(2).

⁴⁷ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

prospective in nature.⁴⁸ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁴⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{50 51}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁵² It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁵³

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as

⁴⁸ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁴⁹ 19 U.S.C. § 1675a(a)(5).

⁵⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁵¹ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁵² 19 U.S.C. § 1675a(a)(1).

⁵³ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁵⁴ In these grouped reviews, a number of respondent interested parties did not provide questionnaire responses and/or participate in these proceedings. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence in the record from the Commission’s original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers and other parties in these reviews.

For the reasons stated below, we find that revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵⁵ In performing our analysis under the statute, the following conditions of competition in the U.S. market for stainless steel bar are among those we have taken into account.

While there has apparently been an increase in demand for stainless steel generally,⁵⁶ apparent consumption of stainless steel bar declined from 246,436 short tons in 1995 to 236,927 short tons in 1999, although it increased in interim 2000, compared with interim 1999.⁵⁷ Demand for stainless steel bar is derived from demand for the end use products in which it is incorporated.⁵⁸ Stainless steel bar is used in the automotive industry and for chemical processing, dairy and food processing, marine applications, and pharmaceutical equipment.⁵⁹ While stainless steel bar is sold as hot-finished and cold-finished, the majority of subject imports were cold-finished, as was most stainless steel bar sold on the open market by U.S. producers.⁶⁰ Purchasers generally require certification or prequalification of their suppliers, and once a product is qualified, price becomes an important factor in purchasing decisions.⁶¹ The price of important raw materials, such as nickel, has an impact on the selling price of stainless steel bar.⁶²

The domestic industry added capacity over the period of review, and its capacity utilization generally declined.⁶³ Nonsubject imports increased their presence in the U.S. market during the period of

⁵⁴ SAA at 869.

⁵⁵ 19 U.S.C. § 1675a(a)(4).

⁵⁶ CR at II-11, PR at II-7.

⁵⁷ See CR and PR at Table I-1. In the first nine months of 2000, apparent consumption increased to 225,473 short tons from 169,168 short tons in the same period in 1999. Id.

⁵⁸ CR at II-11, PR at II-8.

⁵⁹ CR at I-15, PR at I-13.

⁶⁰ CR and PR at Table IV-2; CR at I-16, PR at I-14. Domestic producers reported that 89.5 percent of domestically produced hot-finished stainless steel bar is captively consumed in the manufacture of cold-finished stainless steel bar.

⁶¹ CR at II-13, PR at II-9.

⁶² CR at V-4 - V-7, PR at V-3 - V-5.

⁶³ The industry’s capacity was 289,002 short tons in 1995, 285,352 short tons in 1996, 285,127 short tons in 1997, 285,767 short tons in 1998, and 304,777 short tons in 1999. CR and PR at Table III-1. The increase

(continued...)

review, from 26.9 percent in 1995 to 34.1 percent in 1999, in terms of quantity. Nonsubject imports' share of the market in terms of quantity increased further to 40.9 percent in interim 2000 as compared to 32.5 percent in interim 1999.⁶⁴

The vast majority of domestic producers' shipments of stainless steel bar are through service centers, although a small fraction of shipments are to end users.⁶⁵ Subject imports are also sold to service centers, as well as to master distributors (mill depots), cold finishers, and end users.⁶⁶ Master distributors may hold significant inventories of imports, and sell most of their product to service centers.⁶⁷

Stainless steel bar can be produced on the same equipment used to produce other products, such as stainless steel angle and wire rod.⁶⁸

Based on the record evidence, we find that these conditions of competition in the U.S. stainless steel bar market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the domestic stainless steel bar market provide us with a sufficient basis upon which to assess the likely effects of revocation of the antidumping duty orders at issue within a reasonably foreseeable time.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁶⁹ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁷⁰

In its original determinations, the Commission found the subject import volumes to be significant.⁷¹ The cumulated subject import volume for these four countries was 25,983 short tons in 1991, 26,551 short

⁶³ (...continued)

appears to have continued in 2000, as capacity was 236,471 short tons in the first nine months of 2000 as compared to 229,564 short tons in the first nine months of 1999. CR and PR at Table I-1. Capacity utilization declined from 60.8 percent in 1995, to 50.8 percent in 1999. Id. However, in the first nine months of 2000, capacity utilization was 55.5 percent while it was only 48.7 percent in the same period in 1999. Id.

⁶⁴ Id. Imports from nonsubject countries were 66,304 short tons in 1995, 74,196 short tons in 1996, 88,612 short tons in 1997, 89,520 short tons in 1998, and 80,774 short tons in 1999. In January through September 2000, nonsubject imports were 92,196 short tons, compared with 55,012 short tons in the same period in 1999. Id. As already discussed, their market share displayed similar trends. Id.

⁶⁵ CR and PR at Table IV-3.

⁶⁶ CR and PR at Table IV-3.

⁶⁷ CR at IV-9, PR at IV-4 - IV-7.

⁶⁸ CR at I-17 - I-18, III-3 - III-4; PR at I-15, III-1 - III-3.

⁶⁹ 19 U.S.C. § 1675a(a)(2).

⁷⁰ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁷¹ USITC Pub. 2856 at I-15.

tons in 1992, and 31,687 short tons in 1993. In 1993, the cumulated market penetration for these four countries, measured by quantity, was 15.7 percent.⁷²

Subject imports have maintained a presence in the U.S. market since the orders were imposed, although at much lower levels than in the original investigations. Cumulated subject import volume for Brazil, India, Japan, and Spain was 5,792 short tons in 1995, 3,802 short tons in 1996, 4,063 short tons in 1997, 5,055 short tons in 1998, and 6,546 short tons in 1999. Import volumes in interim 1999 and interim 2000 were 4,064 short tons and 7,439 short tons, respectively.⁷³ We conclude that the orders were primarily responsible for the reduction in exports of stainless steel bar from these subject countries to the United States.⁷⁴

Our assessment of the likely volume of subject imports upon revocation is hindered by the failure of a number of foreign producers to provide data in response to the Commission's questionnaires, particularly producers in Brazil and Japan, and to a lesser extent, India. U.S. embassies in Brazil and Japan have provided us with some data, which we have used in our analysis, as appropriate, along with information from the original investigations, and other available facts. The record indicates there is significant unused capacity in the subject countries.⁷⁵ Moreover, all of the subject countries export a significant share of their production.⁷⁶ There is no record information indicating any likely limitations on the subject countries' resumption of significant export shipments to the United States if the orders are

⁷² CR and PR at Table I-1.

⁷³ CR & PR at Table I-1.

⁷⁴ In the original investigations, the Commission found that an initial decline in subject imports during the period of investigation was in response to the filing of the petition: "[b]ased on a review of the record it appears that the filing of the petition on December 30, 1993 led to a significant reduction in subject import volumes during the January-September 1994 period for which data were collected." USITC Pub. 2856 at I-16.

⁷⁵ Capacity utilization of those Brazilian stainless steel bar producers reporting in the original investigations was *** percent in 1993. CR and PR at Table IV-6. The U.S. Embassy reports 1999 stainless steel bar production in Brazil of 36,577 short tons. Id. This is an increase in annual production since the original investigations, which may be due in part to the Embassy data's coverage of a greater number of producers than had reported in the original investigations. See CR and PR at Table IV-6, note. Although current Brazilian capacity information is not available, even if the current production levels in Brazil were achieved at the ***, significant unused capacity remains and Brazilian producers would be able to increase their exports to the United States significantly without adding capacity. See CR and PR at Table IV-6. Although Indian capacity information is incomplete, representing only 4 of 8 responding producers, Indian capacity utilization for producers reporting both capacity and production was 51.5 percent in 1999, and was 34.5 percent and 66.4 percent in interim 1999 and interim 2000, respectively, leaving significant unused capacity and an ability to increase exports significantly over current levels. CR and PR at Table IV-7. Only one *** Japanese producer responded to our questionnaire, and data from the U.S. Embassy in Tokyo includes production but not capacity information. Comparing capacity levels for Japan in the original investigations with production in 1999 and the interim periods reported by the U.S. Embassy would indicate that Japan too has significant unused capacity and the ability to increase its exports significantly over current levels. CR at Table IV-8. Similarly, Spanish producers report significant unused capacity, with 1999 production of *** short tons and capacity of *** short tons, leaving unused Spanish capacity alone equivalent to about *** percent of 1999 U.S. apparent consumption. Data for the interim period also show available capacity. CR and PR at Table IV-1, Table IV-9.

⁷⁶ In 1999, Brazilian producers exported 50 percent of their stainless steel bar shipments (CR and PR at Table IV-6), Indian producers exported 69.9 percent of their total shipments (CR and PR at Table IV-7), Japanese producers exported 30.7 percent of their production (CR and PR at Table IV-8), and Spanish producers exported *** percent of their total shipments (CR and PR at Table IV-9).

revoked.^{77 78} In addition, there are barriers on importation of certain stainless steel bar from each of the subject countries into third country markets.⁷⁹ We also note that subject producers possess some ability to shift production and export from other stainless steel products to production and export of stainless steel bar.⁸⁰ Moreover, given that U.S. antidumping duty orders or cash deposit/bond requirements are currently in place on two of the other stainless products, stainless steel wire rod and stainless steel angle, subject producers would have an incentive to shift production from those other products to stainless steel bar if the subject orders are revoked.^{81 82} In sum, we find that, if the orders are revoked, subject producers would have the ability and motivation to increase exports to the United States.⁸³ Accordingly, we find that the likely volume of cumulated subject imports would be significant both in absolute terms and relative to U.S. consumption if the antidumping duty orders are revoked.⁸⁴

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the

⁷⁷ The Spanish producers argue that their current relationships with purchasers in third countries and their need to supply related distribution companies would limit their ability to increase exports to the United States. E.g., Spanish Producers' Prehearing Brief at 21-23. While these factors may have some effect, we do not find them sufficient to conclude that exports from Spain to the United States would not increase significantly if the order regarding Spain was revoked.

⁷⁸ Commissioner Bragg did not find the Spanish producers' argument that they are limited in their ability to increase exports to the United States by existing relationships with purchasers in third country markets persuasive.

⁷⁹ Canada has antidumping duty orders in place with respect to stainless steel round bar of 25 to 570 mm in diameter from Brazil, India, Japan, and Spain, as well as countervailing duty orders on that merchandise from Brazil and India. CR at IV-32, PR at IV-21. We note that the Spanish producers maintain that they had *** and that total Spanish exports to Canada were extremely low in the years leading up to the Canadian investigation. Id. The EU has a countervailing duty order on stainless steel bright bar from India. Id.

⁸⁰ See CR at I-18, III-3 - III-4, IV-28 - IV-31; PR at I-15 - I-16, III-1 - III-3, IV-19 - IV-21 (manufacturers' ability to use same facilities to produce stainless steel bar, stainless steel wire rod, and stainless steel angles).

⁸¹ Imports of stainless steel wire rod from Brazil, India, Japan and Spain are covered by U.S. antidumping duty orders: 59 Fed. Reg. 4021 (Jan. 28, 1994) (Brazil); 58 Fed. Reg. 63335 (Dec. 1, 1993) & 58 Fed. Reg. 67909 (Dec. 22, 1993) (India); 63 Fed. Reg. 49328 (Sept. 15, 1998) (Japan); 63 Fed. Reg. 49330 (Sept. 15, 1998) (Spain). Stainless steel angle from Japan and Spain is subject to a preliminary Commerce finding of dumping, and thus is subject to the cash deposit, bond, or other security requirements. 66 Fed. Reg. 2880 (Jan. 12, 2001); see also Stainless Steel Angle From Japan, Korea, and Spain, Inv. Nos. 731-TA-888-890 (Preliminary), USITC Pub. 3356 (Oct. 2000).

⁸² Inventories of subject merchandise in either the home markets or in the United States were not a significant factor in our affirmative determination. We note that *** produce to order. CR at IV-25, PR at IV-18.

⁸³ Several purchasers commented that they expect the volume of subject imports to increase if the orders are revoked. CR at D-11 - D-13, PR at D-7 - D-8.

⁸⁴ Commissioner Bragg infers that, upon revocation, subject producers from Brazil, India, and Japan would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in these grouped reviews, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁸⁵

In the original determinations, the Commission found that subject imports undersold the domestic like product in 292 of 518 price comparisons, and that underselling averaged 11.2 percent.⁸⁶ The Commission found that subject imports depressed or suppressed domestic prices to a significant degree.⁸⁷

Information from U.S. producers and importers in these reviews indicates that domestically-produced stainless steel bar and subject imports are generally substitutable, that most producers, both domestic and subject, meet purchasers' qualification requirements, and that price is an important factor in purchasing decisions.⁸⁸ Thus, for any individual source of supply, increases in sales volume are likely to be achieved through lower prices. The pricing patterns observed in the original investigations are therefore likely to recur and the subject imports would likely significantly undersell the domestic like product.⁸⁹

Available data in these reviews continue to reflect underselling by the subject imports,⁹⁰ although there are relatively few price comparisons in these reviews due to the limited presence of subject imports following issuance of the antidumping duty orders.^{91 92}

The domestic producers' prices for the ten products for which price comparison data were gathered trended downward from 1996 to 1998, then recovered a bit in 1999 before declining in most instances in the third quarter of 2000.⁹³ Prices of subject imports of the ten products also trended downward from 1995 to 2000 in nearly all instances.⁹⁴ While we are mindful of possible differences and changes in the product

⁸⁵ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

⁸⁶ USITC Pub. 2856 at I-17. The Commission also found that, even when comparing domestic producers' prices to service centers with import prices from mill depots to service centers, as respondents had urged, underselling was significant. Id.

⁸⁷ USITC Pub. 2856 at I-17.

⁸⁸ E.g., CR at II-13 - II-15, Table II-2; PR at II-9 - II-10, Table II-2.

⁸⁹ Several purchasers commented that they expect the prices of subject imports to decline if the orders are revoked. CR at D-11 - D-13, PR at D-7 - D-8.

⁹⁰ CR at V-10 - V-14, PR at V-8 - V-10; CR and PR at Tables V-1 - V-13; CR and PR at Appendix F.

⁹¹ No pricing data were reported by importers of stainless steel bar from Brazil and Japan and coverage for India and Spain was limited. Pricing data for India were generally for small quantities. A portion of the sales of subject imports, notably those from Spain, are to mill depots/master distributors and, thus, are at a different level of trade than sales to service centers/distributors. CR at V-10, V-13, PR at V-8, V-9.

⁹² Commissioner Bragg again points out that subject imports from Spain would continue to generally undersell the domestic like product at the service center level even if one were to include a *** percent mark-up for sales of subject merchandise sold through mill depots to service centers. CR and PR at Tables V-8-V-13; CR at V-13, n.9, PR at V-10, n.9.

⁹³ CR at V-10 - V-12, PR at V-8 - V-9.

⁹⁴ CR and PR at Tables V-1 - V-13, CR and PR at Appendix F.

mix, we note that unit values for imports from all subject countries combined and domestically-produced stainless steel bar declined from 1997 to 1999.^{95 96}

As noted above, the likelihood standard is prospective in nature and we find that subject imports from Brazil, India, Japan, and Spain are generally substitutable with the domestic like product, and are likely to increase significantly in the reasonably foreseeable future if the antidumping duty orders are revoked. In addition, the likely increased volumes of subject imports would likely be sold, as in the original investigations, at generally lower prices that would be likely to have significant depressing and suppressing effects on the prices of the domestic like product.⁹⁷

E. Likely Impact of the Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁹⁸ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁹⁹

In the original investigations, the Commission found that increased subject imports and the declines in prices from 1991 to 1993 had a significant adverse impact on the domestic industry.¹⁰⁰ The Commission cited operating losses, reduced investment, and stagnant shipments even in a growing market.¹⁰¹

In these reviews, we find that, although the industry's condition has improved since the original investigations, its performance deteriorated over the review period. During the review period, production

⁹⁵ See CR and PR at Table C-1.

⁹⁶ We also are mindful of the price trends for raw materials, particularly ferrochromium, nickel, and stainless steel scrap, and their impact on the cost of producing stainless steel bar, but note that increases in nickel and scrap prices in 1999 through the first quarter of 2000 appear to be larger than any increases in the prices of either the subject imports or the domestic like product. CR at V-4 - V-7, V-10 - V-28; PR at V-4 - V-5, V-8 - V-12; CR and PR at Appendix F.

⁹⁷ Commissioner Bragg infers that, in the event of revocation, subject producers in Brazil, India, and Japan will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determinations.

⁹⁸ 19 U.S.C. § 1675a(a)(4).

⁹⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if an order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

¹⁰⁰ USITC Pub. 2856 at I-17 - I-18.

¹⁰¹ Id.

and capacity utilization declined in 1997, 1998, and 1999 from peaks in 1996.¹⁰² The domestic industry's market share declined from 70.7 percent in 1995 to 63.1 percent in 1999, and to 55.8 percent in the interim 2000 period, compared with 65.1 percent in interim 1999.¹⁰³ The quantity of U.S. producers' shipments also decreased 14.2 percent from 1995 to 1999, before increasing 14.3 percent in the interim 2000 period compared with the interim 1999 period.¹⁰⁴ The number of U.S. producers' production workers also decreased during the review period, from 2,150 in 1995 to 1,873 in 1999, then increased slightly in the interim period, to 1,910 in interim 2000, compared with 1,814 in interim 1999.¹⁰⁵

In these reviews, the Commission gathered financial data for the domestic industry on two bases in light of the fact that certain domestic producers transfer stainless steel bar to related service centers or distributors for final sales to unrelated end users.^{106 107} Operating income based on data for production operations only declined from \$71.1 million in 1995 to \$3.6 million in 1999, then recovered somewhat to *** in interim 2000, compared with *** in interim 1999.¹⁰⁸ Operating income as a percent of sales declined from 9.5 percent in 1995 to 0.7 percent in 1999 and was *** percent in interim 1999 as compared to *** percent in interim 2000. Operating income based on data that include related distributor sales to unrelated parties declined from *** in 1995 to *** in 1999, and was *** and *** in interim 1999 and interim 2000, respectively. Operating income as a percentage of sales followed similar trends, declining from *** percent in 1995 to *** percent in 1999, and was *** percent in interim 2000 compared to *** percent in interim 1999. According to either measure, net sales values and per-unit profitability also decreased between 1995 and 1999, and increased somewhat in the interim period.¹⁰⁹ While some indicators showed some improvement in interim 2000, as compared to interim 1999, we find that the likely increased lower priced imports from the subject countries would likely push the domestic industry further into a decline and

¹⁰² CR at Table I-1. We note that production capacity increased somewhat in the latter part of the review period.

¹⁰³ CR at Table I-1.

¹⁰⁴ CR at Table C-1.

¹⁰⁵ CR at Table C-1.

¹⁰⁶ See CR at III-9, PR at III-5 - III-6. CR and PR at Tables III-5 and III-6 present data for the U.S. producers' production operations only, including sales by the producers to related distributors, but not the operations of the distributors themselves. By contrast, CR and PR Tables III-3 and III-4 present data that include the operations of the producers and related distributors, including sales by the distributors to unrelated customers.

We are mindful that the statute directs the Commission to consider the impact of subject imports only in the context of U.S. production operations. 19 U.S.C. § 1677(7)(B)(I). We have examined both sets of financial data out of concern that producers' data on production operations alone may not present an accurate picture of the overall financial performance of the production operations of the industry, in view of the fact that a significant portion of sales by certain producers are at transfer prices.

¹⁰⁷ Commissioner Bragg notes that while she took into account domestic producers' related distributor revenues in analyzing the domestic industry's financial performance, she relied principally on financial data which excluded related distributor revenues.

¹⁰⁸ CR and PR at Tables III-5, C-1.

¹⁰⁹ CR and PR at Tables III-3, III-5, C-1.

prevent the industry from improving its financial condition. Accordingly, we find based on the above that the domestic industry is vulnerable to material injury if the orders are revoked.^{110 111}

Given the generally substitutable nature of the subject and domestic products, we find that the likely significant volume of low-priced subject imports, when combined with the expected negative price effects of those imports, would likely have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry. This reduction in the industry's production, sales, and revenues would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty orders are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we conclude that revocation of the antidumping duty orders covering stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

¹¹⁰ CR and PR at Tables III-3, III-5, C-1. We find that the financial data that do not include related service center/distributor operations suggest a greater degree of vulnerability than the data that do include such operations. Nevertheless, we find that either set of data supports an affirmative determination in these reviews.

¹¹¹ Commissioner Hillman does not join this paragraph, but does join the footnote preceding this footnote. She finds the industry's trade, employment, and financial data to be mixed regarding whether the industry is in a vulnerable condition.